Supreme Court, U.S.
FILED

No. (1)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

THOMAS H. CLARK,

Petitioner,

v.

BALTIMORE MUNICIPAL GOLF CORPORATION

AND

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

THOMAS H. CLARK,
6201 Loch Raven Boulevard, #202,
Baltimore, Maryland 21239,
(410) 433-9268,
Pro Se Petitioner.

THE DAILY RECORD COMPANY, 11 EAST SARATOGA STREET, BALTIMORE, MD 21202

85 pp

QUESTIONS PRESENTED

1. Whether merit litigation can be found as a matter of law without a finding of fact from the exhibits when there has been no argument.
2. Whether a constitutional issue can be found without a finding of fact from the exhibits when there has been no argument.
3. Whether the appellate court can properly affirm and adopt a district court's conclusions of law that is not supported by a finding of fact from the exhibits or argument.
4. Whether justice is served when the mere filing of an injunction based

on equitable grounds is used to deny a subsequent constitutional right.

LIST OF PARTIES

Parties to the proceedings below were the petitioner Thomas H. Clark, Pro Se and respondents, Baltimore Municipal Golf Corporation and Mayor and City Council of Baltimore.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

THOMAS H. CLARK,

Petitioner

v.

BALTIMORE MUNICIPAL GOLF CORPORATION, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Thomas H. Clark, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The per curiam opinion of the Court of appeals affirming is unreported. It is reprinted in the appendix hereto, p. 1a-3a infra.

The memorandum opinion of the U.S. District Court for Baltimore City concluding res judicata is unreported. It is reprinted in the appendix hereto, p. 4a-13a infra.

JURISDICTION

The judgment of the Fourth Circuit Court of Appeals affirming res judicata was made on March 7, 1994, and entered on March 7, 1994, under Case No. 93-2531. It is reprinted in the appendix hereto, p. 1a infra. Rehearing was not

requested.

This court has jurisdiction to review the judgment of the Fourth Circuit under 28 U.S.C. sec. 1254(1).

STATEMENT OF THE CASE

The district court has jurisdiction under 28 U.S.C., § 1331 and 42 U.S.C. § 1983.

Petitioner filed an injunction petition on equitable grounds in Baltimore City. Without filing an answer, the respondent corporation filed a Motion to Dismiss. Prior to an Interlocutory Hearing, the court heard arguments on the motion. The respondent argued first; petitioner argued second; and respondent argued last. Before any

further proceedings, the court granted the respondent's motion. An appeal was not entered.

Months later, upon new knowledge, petitioner filed a 14th Amendment, sec. 1 suit in federal court. Without filing an answer, respondent filed a Motion to Dismiss on the grounds of res judicata. Petitioner filed a Response with exhibits. Respondent did not file a reply. Without a hearing, the district judge granted the motion on the grounds of res judicata on November 16, 1993, and entered on November 17, 1993. Petitioner appealed to the Fourth Circuit on December 1, 1993.

On March 7, 1994, the Fourth

Circuit, without a hearing, affirmed by an unpublished, non-binding per curiam opinion entered on March 7, 1994.

REASONS FOR GRANTING THE PETITION

There is no authority authorizing litigation as a conclusion of law without a supporting finding of fact from the exhibits.

There is no authority authorizing a constitution issue as a conclusion of law without a finding of fact from the exhibits.

There is no authority authorizing the appellate court to adopt and affirm the District Court's memorandum opinion on res judicata devoid of finding of fact of litigation from the exhibits.

There is no authority denying a Constitutional right in federal court because an equitable injunction petition is filed in a city or state court.

The Respondent avoided litigation in equity court, and now claims litigation to deny the petitioner's constitutional rights in a federal court.

Justice requires that constitutional rights not be so easily evaded.

One District Court and three Appellate Judges have decided prior litigation where there is no finding of litigation fact. This is such a substantial and intolerable deviation

from the standard of judicial administration as to be frivolous. They are in immediate need of this court's supervision.

CONCLUSION

The petition for a writ of certiorari should be granted for the reasons stated, and in the interest of justice and judicial administration.

Respectfully submitted,

Thomas H. Clark

THOMAS H. CLARK
Pro Se
Admitted, October 17, 1977
6201 Loch Raven Boulevard, #202
Baltimore, Maryland 21239
(410) 433-9268

Date: March 25, 1994

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 93-2531

THOMAS H. CLARK,

Plaintiff - Appellant,

versus

BALTIMORE MUNICIPAL
GOLF CORPORATION;
MAYOR AND CITY COUNCIL
OF BALTIMORE,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Herbert F. Murray, Senior District Judge.
(CA-93-2483-HM)

Submitted: February 17, 1994

Decided: March 7, 1994

Before RUSSELL, MURNAGHAN, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thomas H. Clark, Appellant Pro Se. Ronald Dicky Byrd, BALTIMORE GAS & ELECTRIC COMPANY, Michael Allan Fry, Assistant Solicitor, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant appeals from the district court's order denying relief on his 42 U.S.C. § 1983 (1988) complaint. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly,

we affirm on the reasoning of the district court. Clark v. Baltimore Municipal Golf Corp., No. CA-93-2483-HM (D. Md. Nov. 17, 1993). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS H. CLARK	:	
V.	:	CIVIL NO. HM-93-2483
BALTIMORE MUNICIPAL GOLF CORPORATION, ET AL.	:	

...oOo...

M E M O R A N D U M

Presently before the Court is defendant Baltimore Municipal Golf Corporation's ("BMGC") motion to dismiss.[1] Memoranda in support of and in opposition to the pending motion have been filed by the parties and the Court

[1]Defendant Mayor and City Council of Baltimore ("Mayor and City Council") filed a separate motion for summary judgment on the same ground as that asserted by the BMGC. Therefore, the Court's ruling shall apply equally to the Mayor and City Council's motion.

been filed by the parties and the Court is prepared to rule. No hearing is deemed necessary. Local Rule 105.6 (D. Md. 1991).

I. BACKGROUND

Plaintiff Thomas H. Clark's ("Clark") complaint alleges that on or about April 3, 1993, BMGC[2] instituted a rule prohibiting the use of self-propelled golf carts on weekends and holidays from April through October in order to speed up play. Clark alleges that as a result of the new rule, he was denied the use of BMGC's facilities and

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[2]The BMGC is a private, non-profit corporation which leases two golf courses from the Mayor and City Council of Baltimore. It is not a public entity and operates the courses independent of any control by the Mayor and City Council.

that such prohibition constitutes a denial of his right to procedural due process, substantive due process and equal protection of the laws. Clark seeks nominal damages and $50,000 in punitive damages.

Clark previously filed suit in the Circuit Court for Baltimore City alleging the same basic facts at issue here -- that the BMGC's rule prohibiting the use of self-propelled carts on weekends and holidays violated his right to have equal access to the facility.[3] At the conclusion of a hearing on May 19, 1993, the Honorable Mabel E. Houze

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[3]That suit was filed on April 12, 1993, and was styled Clark v. Baltimore Municipal Golf Corporation, case number 93102019/CE162864.

Hubbard granted the BMGC's motion to dismiss. Clark took no appeal from that decision. He subsequently filed the instant action.

In its motion to dismiss, the BMGC asserts that the issue and parties in this suit are identical to those litigated in the previous suit, this action is barred by res judicata.

"Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." Parklane Hosiery v. Shore, 439 U.S. 322, 327 n.5 (1979). The Fourth Circuit has articulated the essential elements of

res judicata as follows: "`(1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits.'" Keith v. Aldridge, 900 F.2d 736, 739 (4th Cir. 1990), cert. denied, 111 S. Ct. 257 (1990) (quoting Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 486 (4th Cir.), cert. denied, 454 U.S. 878 (1981)).

As noted above, at the conclusion of the hearing before the circuit court on May 19, 1993, Clark's complaint was dismissed. That dismissal was based on the court's finding that Clark had

failed to present a legally cognizable claim. Thus, for purposes of satisfying the first element of res judicata, the judgment of the circuit court was on the merits. See 18 C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedures § 4439 (1981); Schwartz v. United States, 745 F. Supp. 1132, 1134 (D. Md. 1990) (quoting Fairmont Aluminum Co. v. Commissioner, 222 F.2d 622 (4th Cir.), cert. denied, 350 U.S. 838 (1955) (judgment is "on the merits" if based "on the legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form."

As for the second element, a comparison of the papers filed in the

circuit court and this court shows that the instant suit "arises out of the same transaction . . . as the claim resolved by the prior judgment." Keith, 900 F.2d at 740.[4] The third element is also satisfied since it is undisputed that the parties to this action are the same as in the previous action. The Court agrees, therefore, that this action is barred under the doctrine of res judicata. Accordingly, the BMGC's motion to dismiss, and the Mayor and City Council's motion for summary judgment, will be granted.

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[4]Clark's allegation in this suit that the BMGC's policy violates his constitutional rights will not bar the application of res judicata since "a mere change in legal theory does not create a new cause of action." Schwartz, 745 F. Supp. at 1135.

The Court will enter a separate order.

Harry F. Murray
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS H. CLARK :

V. : CIVIL NO. HM-93-2483

BALTIMORE :
GOLF CORPORATION,
ET AL. :

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O R D E R

In accordance with the foregoing Memorandum, it is this 16th day of November, 1993, by the United States District Court for the District of Maryland,

ORDERED:

(1) that defendant Baltimore Municipal Golf Corporation's Motion to Dismiss be, and the same hereby is,

Granted;

(2) that defendant Mayor and City Council's Motion for Summary Judgment be, and the same hereby is, Granted;

(3) that the Clerk of the Court shall Close this case; and

(4) that the Clerk of the Court shall mail a copy of this Order with the accompanying Memorandum to the parties.

Harry F. Murray
Senior United States District Judge